

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

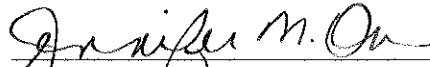
REBECCA BYBEE,	:	Case No. C-1-01-623
	:	
Plaintiff,	:	Judge Weber
	:	
vs.	:	Magistrate Judge Hogan
	:	
THE PROCTER & GAMBLE	:	
COMPANY, et al.,	:	
	:	
Defendants.	:	
	:	
	:	

**DEFENDANT'S MEMORANDUM IN OPPOSITION
TO PLAINTIFF'S MOTION TO SUPPLEMENT RECORD**

Defendants, The Procter & Gamble Company and The Procter & Gamble Health Care Plan ("Defendants"), hereby oppose Plaintiff's attempt to supplement the Administrative Record with the audio recording of a conversation that purportedly occurred between Plaintiff Rebecca Bybee and a person named "Heather" (whom Plaintiff, without any support, alleges was "an employee of The Procter & Gamble Co."). Simply stated, Plaintiff is not permitted to conduct discovery in this case or add information or documents to the Administrative Record. The Court has made it clear, in its rulings, that Plaintiff was entitled to conduct minimal discovery solely "for the limited purpose of determining the contents of the Plan Document." See Orders, Doc. #44 and 51. Plaintiff has already done so. Plaintiff now attempts to do an end-run around clearly established case law regarding the adjudication of ERISA cases and this Court's orders by requesting the Administrative Record be supplemented with a portion of a taped conversation

that has not been sufficiently authenticated. Plaintiff's request to supplement the record should be denied.

Respectfully submitted,



John E. Jevicky, Esq. (0012702)

Jennifer M. Orr, Esq. (0069594)

DINSMORE & SHOHL LLP

1900 Chemed Center

255 East Fifth Street

Cincinnati, OH 45202

(513) 977-8200

Trial Attorneys for Defendants

CERTIFICATE OF SERVICE

It is hereby certified that the foregoing **Defendants' Memorandum in Opposition to Plaintiff's Motion to Supplement Record** has been forwarded regular U.S. mail, postage prepaid, this 24th day of September, 2004, to the following:

Carl E. Grayson, Esq.

7801 U.S. 42

Florence, KY 41042

(859) 283-9990

Trial Attorney for Plaintiff

